

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**ERICSSON INC., and
TELEFONAKTIEBOLAGET LM
ERICSSON**

v.

APPLE INC.

§
§
§
§
§
§
§

Case No. 2:21-cv-00376-JRG

**MINUTES FOR PRETRIAL CONFERENCE – DAY 1
HELD BEFORE U. S. DISTRICT JUDGE RODNEY GILSTRAP
November 21, 2022**

OPEN: 08:57 AM

ADJOURN: 04:57 PM

ATTORNEYS FOR PLAINTIFFS: See attached

ATTORNEYS FOR DEFENDANT: See attached.

LAW CLERKS: Katie Albanese
Patrick Clark
Harris Huguenard

COURT REPORTER: Shawn McRoberts, RMR, CRR

COURTROOM DEPUTY: Andrea Brunson, CP

| <u>TIME</u> | <u>MINUTE ENTRY</u> |
|--------------------|---|
| 08:57 AM | Court opened. |
| 08:58 AM | Court called for announcements from counsel. |
| 08:59 AM | Court provided instructions and housekeeping matters to the parties. Case is set No. 1 for jury selection and trial on Monday, December 5, 2022. Trial will begin following empanelment of jury. Eight jurors will be selected. Peremptory strikes: Four per side. Counsel will be given 30 minutes per side for <i>voir dire</i> . The parties will be given 15-1/2 hours per side for the jury trial portion. Opening statements will be 30 minutes per side. Closing arguments will be 40 minutes per side. Court to be notified by 10:00 PM each night of disputes/objections not resolved through meet and confer efforts. Three (3) jointly prepared three-ring binders with disputed information are to be submitted to the Court by 7:00 AM the following day. The Court will be available in chambers by |

| <u>TIME</u> | <u>MINUTE ENTRY</u> |
|-------------|--|
| | 7:30 AM every morning to take up any housekeeping matters or late-arriving disputes that might come up during trial. Deposition-clip objections and/or disputes are to be taken up by the Court the day before the day such deposition is to be used. Court encouraged the parties to utilize the meet and confer process during the course of the trial to resolve disputes. It is the Court's intention to bring the jury in every morning at 8:30 AM. Lunch will be brought in daily for the jurors. Rule 50(a) motions will be heard by the Court after all the evidence is in and Plaintiffs rest any rebuttal case. Court will hold an informal charge conference (off the record) after the close of evidence. Formal charge conference will follow thereafter and on the record. Court reminded counsel not to refer to individuals by their first names, and to advise their respective witnesses re: same. Counsel instructed counsel to refer to the Court's Standing Order re: the sealing of the courtroom re: confidential or highly sensitive testimony. Court instructed the parties to follow the instructions from Deputy Clerk in Charge, Mrs. Kecia Clendening re: receipt, review and return of the Juror Questionnaires. Parties to be prepared every morning of trial to read into the record those exhibits used prior day. Twelve juror notebooks to be delivered to chambers no later than 12:00 PM noon on Wednesday, November 30, 2022. Notebooks to contain: Page for each witness with a head and shoulder photograph, name and ruled lines for notetaking; three-hole punch notepad for further notes and a non-clicking pen. Each witness page should be tabbed for easy navigation. Court CARRIED ruling re: inclusion of additional documents in the jury notebooks. Counsel confirmed no interpreters will be utilized during the trial. A reminder that expert witnesses are confined to the four corners of their report. |
| 09:20 AM | Further housekeeping matters, Court GRANTED [SEALED] Apple's Unopposed Motion for Leave to Extend the Page Limit (Dkt. No. 283). |
| 09:20 AM | On the record, Court reviewed those matters discussed in chambers prior to today's pretrial conference. |
| 09:21 AM | Position of Plaintiffs by Mr. Stevenson. |
| 09:21 AM | Responsive position of Defendant by Mr. Mueller. |
| 09:26 AM | Court proceeded with hearing argument re: disputed dispositive motions: |
| 09:26 AM | Court concurrently heard argument re: [SEALED] Apple's Motion for Summary Judgment on Its Claim for Declaratory Judgment That Ericsson Breached the Parties' Prior License Agreement (Dkt. No. 189) and [SEALED] Ericsson's MSJ #1: Motion for Summary Judgment on Apple's Counterclaim Count I (Breach of the 2015 License Agreement) (Dkt. No. 192). |
| 09:26 AM | Mr. Cordell presented argument for Defendant. |
| 09:40 AM | Responsive argument by Mr. Stevenson for Plaintiffs. |
| 09:42 AM | Record SEALED. |
| 09:42 AM | Continuation of responsive argument by Mr. Stevenson. |
| 09:47 AM | Record UNSEALED. |
| 09:47 AM | Continuation of responsive argument by Mr. Stevenson. |
| 09:51 AM | Rebuttal argument by Mr. Cordell for Defendant. |
| 09:55 AM | Court DENIED Dkt. No. 189 and GRANTED Dkt. No. 192. |
| 09:58 AM | Court heard argument re: [SEALED] Ericsson's Motion Under Fed. R. Civ. P. 44.1 for Determination of Foreign Law That the ETSI IPR Policy's FRAND Contract Does Not Require Granting a License or Other Rights to Implementation Patents (Dkt. No. 178). |

| TIME | MINUTE ENTRY |
|-------------|---|
| 09:58 AM | Mr. Chern presented argument for Plaintiffs. |
| 09:59 AM | Record SEALED. |
| 09:59 AM | Continuation of argument by Mr. Chern. |
| 10:14 AM | Record UNSEALED. |
| 10:13 AM | Responsive argument by Mr. Mueller for Defendant. |
| 10:15 AM | Record SEALED. |
| 10:15 AM | Continuation of responsive argument by Mr. Mueller. |
| 10:20 AM | Rebuttal argument by Mr. Chern for Plaintiffs. |
| 10:21 AM | Court GRANTED Dkt. No. 178 with instructions as set forth in the record. |
| 10:26 AM | Court heard argument re: [SEALED] Ericsson's MSJ #2: Motion for Summary Judgment on Apple's Counterclaim Count IV (Declaration of FRAND Terms for Ericsson's Global Cellular SEP Portfolio) (Dkt. No. 194). |
| 10:27 AM | Record remained SEALED. |
| 10:27 AM | Mr. Mathews presented argument for Plaintiffs. |
| 10:35 AM | Recess. |
| 11:06 AM | Court reconvened. |
| 11:06 AM | Continuation of argument by Mr. Mathews. |
| 11:06 AM | In light of Court's previous guidance, no argument presented by Apple Defendant. |
| 11:07 AM | Court DENIED Dkt. No. 194. |
| 11:08 AM | Court heard argument re: [SEALED] Apple's Motion for Summary Judgment That the Parties' Prior License Agreement Granted Apple Rights and Freedom to Operate Under All of Ericsson's Declared 5G Patents (Dkt. No. 182). |
| 11:08 AM | Record remained SEALED. |
| 11:08 AM | Mr. Syrett presented argument for Defendant. |
| 11:16 AM | Responsive argument by Ms. Woodin for Plaintiffs. |
| 11:21 AM | Rebuttal argument by Mr. Syrett for Defendant. |
| 11:23 AM | Court DENIED Dkt. No. 182. |
| 11:24 AM | Court heard argument re: [SEALED] Ericsson's MSJ #3: Motion for Summary Judgment on Apple's Counterclaim Count III (Breach of Duty of Good Faith) and Partial Summary Judgment on Apple's Counterclaim Count II (Breach of Ericsson's FRAND Contractual Commitment) (Dkt. No. 195). |
| 11:24 AM | Record UNSEALED. |
| 11:25 AM | Mr. Tuck presented argument for Plaintiffs. |
| 11:28 AM | Responsive argument by Mr. Mueller for Defendant. |
| 11:34 AM | Rebuttal argument by Mr. Tuck for Plaintiffs. |
| 11:37 AM | Court DENIED Dkt. No. 195. |
| 11:38 AM | Court heard argument re: [SEALED] Expert Motion No. 4: Ericsson's Motion to Strike Reference From Apple's Experts That Apple Has Allegedly Agreed to be "Bound" (Dkt. No. 180) |
| 11:39 AM | Mr. Stevenson presented argument for Plaintiffs. |
| 11:41 AM | Record SEALED. |
| 11:41 AM | Continuation of argument by Mr. Stevenson. |
| 11:43 AM | Responsive argument by Mr. Syrett for Defendant. |
| 11:46 AM | Rebuttal argument by Mr. Stevenson for Plaintiffs |

| <u>TIME</u> | <u>MINUTE ENTRY</u> |
|-------------|---|
| 11:48 AM | Court DENIED Dkt. No. 180. |
| 11:56 AM | Recess for lunch. |
| 01:32 PM | Court reconvened. |
| 01:33 PM | Court requested update re: meet and confer efforts re: document inclusion to jury notebooks. Mr. Mueller updated the Court re: agreement and Mr. Stevenson confirmed. |
| 01:33 PM | Court directed the inclusion of agreed documents (in chronological order) to jury notebooks. |
| 01:34 PM | Court addressed the sealing and unsealing process of today's record. |
| 01:34 PM | Court directed before the release of the transcript, both sides are to have the opportunity to review and offer targeted redactions. |
| 01:35 PM | Court heard argument re: [SEALED] Apple's <i>Daubert</i> #1: Motion to Preclude Expert Testimony and Opinions of Dr. Stefan Parkvall (Dkt. No. 183). |
| 01:35 PM | Mr. Selwyn presented argument for Defendant. |
| 01:45 PM | Responsive argument by Ms. Woodin for Plaintiffs. |
| 01:51 PM | Rebuttal argument by Mr. Selwyn for Defendant. |
| 01:54 PM | Court DENIED Dkt. No. 183. |
| 01:55 PM | Court heard argument re: [SEALED] Expert Motion No. 6: Ericsson's Motion to Strike and Exclude Opinions and Testimony of Dr. Matthew Valenti (Dkt. No. 181). |
| 01:55 PM | Mr. Barton presented argument for Plaintiffs. |
| 02:10 PM | Responsive argument by Ms. Amadi for Defendant. |
| 02:18 PM | Court DENIED Dkt. No. 181. |
| 02:18 PM | Court heard argument re: [SEALED] Apple's <i>Daubert</i> #3: Motion to Preclude Expert Testimony and Opinions of Robert Mills (Dkt. No. 185). |
| 02:19 PM | Ms. Amadi presented argument for Defendant. |
| 02:34 PM | Responsive argument by Mr. Bailey for Plaintiffs. |
| 02:36 PM | Court DENIED Dkt. No. 185. |
| 02:37 PM | Court heard argument re: [SEALED] Ericsson's Expert Motion No. 5: Ericsson's <i>Daubert</i> Motion to Exclude the Opinions and Testimony of Apple's Expert Yvonne Verse (Dkt. No. 190). |
| 02:37 PM | Mr. Lutz presented argument for Plaintiffs. |
| 02:41 PM | Responsive argument by Mr. Syrett for Defendant. |
| 02:45 PM | Court DENIED Dkt. No. 190 with instructions as set forth in the record. |
| 02:47 PM | Court heard argument re: [SEALED] Apple <i>Daubert</i> #6: Motion to Exclude Expert Testimony and Opinions of Dr. Rebecca Reed-Arthurs and Mr. Mills' Reliance Thereon (Dkt. No. 193). |
| 02:47 PM | Ms. Amadi presented argument for Defendant. |
| 02:50 PM | Responsive argument by Ms. Woodin for Plaintiffs. |
| 02:52 PM | Court DENIED Dkt. No. 193. |
| 02:53 PM | Recess. |
| 03:14 PM | Court reconvened. |
| 03:14 PM | Mr. Stevenson informed the Court re: agreements reached re: remaining dispositive motions. Mr. Mueller confirmed. |

| TIME | MINUTE ENTRY |
|-------------|--|
| 03:16 PM | Court heard argument re: [SEALED] Ericsson's Expert Motion No. 3: Ericsson's <i>Daubert</i> Motion to Exclude Testimony by Apple's Experts That Amount to Legal Conclusions and Are Based on Hearsay (Dkt. No. 188). |
| 03:16 PM | Mr. Chern presented argument for Plaintiffs. |
| 03:21 PM | Courtroom sealed. |
| 03:21 PM | Continuation of argument by Mr. Chern. |
| 03:26 PM | Courtroom unsealed. |
| 03:26 PM | Responsive argument by Mr. Elacqua for Defendant. |
| 03:32 PM | Court made rulings as set forth in the record re: Dkt. No. 188. |
| 03:35 PM | Court heard argument re: [SEALED] Apple's <i>Daubert</i> #4: Motion to Exclude Theoretical Opinions Related to Holdout (Dkt. No. 197). |
| 03:36 PM | Mr. Mueller presented argument for Defendant. |
| 03:42 PM | Responsive argument by Mr. Lutz for Plaintiffs. |
| 03:52 PM | Rebuttal argument by Mr. Mueller for Defendant. |
| 03:57 PM | Court made rulings as set forth in the record re: Dkt. No. 197. |
| 03:59 PM | Court heard argument re: [SEALED] Apple Inc.'s <i>Daubert</i> #5: Motion to Exclude Expert Testimony and Opinions Relying on Bird & Bird "Census" Data (Dkt. No. 184). |
| 03:59 PM | Mr. Selwyn presented argument for Defendant. |
| 04:14 PM | Responsive argument by Mr. Bailey for Plaintiffs. |
| 04:24 PM | Rebuttal argument by Mr. Selwyn for Defendant. |
| 04:26 PM | Court DENIED Dkt. No. 184. |
| 04:28 PM | Court heard argument re: [SEALED] Apple Inc.'s <i>Daubert</i> #7: Motion to Exclude Expert Testimony and Opinions of Dr. David Cooper and Ericsson Experts Relying Thereon (Dkt. No. 196). |
| 04:29 PM | Mr. Selwyn presented argument for Defendant. |
| 04:35 PM | Responsive argument by Mr. Barton for Plaintiffs. |
| 04:42 PM | Rebuttal argument by Mr. Selwyn for Defendant. |
| 04:44 PM | Court DENIED Dkt. No. 196. |
| 04:45 PM | Court heard argument re: [SEALED] Expert Motion No. 1: Ericsson's Motion to Strike Expert Testimony Regarding Other Litigation Between the Parties (Dkt. No. 186). |
| 04:45 PM | Mr. Mathews presented argument for Plaintiffs. |
| 04:56 PM | Dkt. No. 186: Withdrawn by the Plaintiff. |
| 04:56 PM | Court will proceed with Day 2 of pretrial conference tomorrow at 8:30 AM. |
| 04:57 PM | Court adjourned. |